IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

WP(C).No. 20808 of 2007(B)

OS.225/2006 of PRL.M.C.,KOZHIKODE-II

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PETITIONER:

PADMANABHAN MOOSAD, AGED 49 YEARS,
S/O. KRISHNAN MOOSAD, KOZHIPARAMBATH ILLOM,
SANTHI WORK, P.O.KOMMERI, VALAYANAD AMSOM AND
DESOM, KOZHIKODE TALUK.

BY ADV. SRI.M.G.ASHOKAN
SRI.K.SANEESH KUMAR

RESPONDENTS:

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1. **ARUN MOOSAD KOZHIPARAMBATH ILLATH,**
AGED 37 YEARS, S/O. NARAYANAN MOOSAD,
SANTHI WORK.

2. **GOKUL MOOSAD,**
KOZHIPARAMBATH ILLATH, AGED 35 YEARS,
-DO-

3. **MAHESWARA MOOSAD, AGED 33 YEARS,**
KOZHIPARAMBATH ILLOM, ALL ARE RESIDING AT
ADVITHA ILLATH, P.O.KOMMERI, KOZHIKODE TALUK.

4. **PAYYARATH ILLATH RAJANI, AGED 34 YEARS,**
W/O. SUBRAMANIAN, CLERK, POSTAL DEPARTMENT,
AKSHAYA, KOMMERI P.O., VALAYANAD AMSOM,
KOMMERI DESOM, KOZHIKODE TALUK, KOZHIKODE-7.

5. **KOZHIKODE ZAMOORIN RAJAN, TRUSTEE,**
SREE VALAYANAD BHAGAVATHY TEMPLE,
SREE VALAYANAD DEVASWOM, CHALAPPURAM,
KASABA AMSOM & DESOM, KOZHIKODE TALUK,
KOZHIKODE-673 002.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.C.NO. 20808 OF 2007

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Dated this the 6th Day of July, 2007.

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J U D G M E N T

This Writ Petition is filed seeking to set aside the order passed by the learned Munsiff in I.A.1430/07 in O.S.225/06. It was an application under Order XXXIX Rule 3 of Code of Civil Procedure. When an application is disposed of under Order XXXIX Rule 3, an appeal is provided under Order XLIII Rule 1 or in other words order of injunction passed by a court is an appealable order. When there is equally efficacious remedy filed, I am not prepared to entertain this Writ Petition under extra ordinary jurisdiction or under Article 227 of Constitution of India. Therefore the Writ Petition is dismissed on that ground. But at the same time the learned counsel submits that there is a question of maintainability and jurisdiction of the civil court in dealing with the matter. If issues are framed under Order XIV Rule 2(2) of Code of Civil Procedure gives discretion to the court below to consider it as preliminary issue if it satisfies the

ingredients mentioned therein. The question of jurisdiction as well as if the suit is bad on account of the law in force. The petitioner is at liberty to file application. The learned Munsiff is directed to dispose of the same in accordance with law after hearing both sides.

M.N.KRISHNAN
JUDGE

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